

SCHEDULES

SCHEDULE 12

PROTECTIVE PROVISIONS

PART 5

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

42.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between Network Rail and the Trust.

(2) In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work as may be carried out during the period of 24 months from the completion of that work,

and “construct” and “constructed” are construed accordingly;

“detriment” means any damage to the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust’s network); and
- (g) any interference with the exercise by any person of rights over the Trust’s network;

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 47(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of the waterway, or may in any way affect the waterway;

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“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways; and

“the waterway” means the Manchester, Bolton and Bury Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with that canal.

43.—(1) Network Rail must not under the powers conferred by this Order acquire compulsorily any land of the Trust or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Trust.

(2) Network Rail must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(3) Network Rail must not exercise the powers conferred by article 12(1) (temporary stopping up of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(4) Nothing in article 20 (temporary interference with river and waterway) authorises Network Rail—

(a) to discharge any water directly or indirectly into the waterway; or

(b) to carry out any works to, or make any opening in, or otherwise interfere with, the waterway (including its banks and bed),

except with the consent of the Trust and on terms that the Trust may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of the engineer.

(5) Network Rail must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(6) Network Rail must not exercise the powers conferred by article 19 (power to survey and investigate land) and the powers conferred by article 20, or section 11(3) (powers of entry) of the 1965 Act in relation to the waterway unless such exercise is with the consent of the Trust.

(7) The consent of the Trust under sub-paragraphs (1) to (6) and the approval of plans under sub-paragraph (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 17 (discharge of water) may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to Network Rail to require Network Rail to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

44. Network Rail must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of a specified work other than—

(a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and

(b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—

(i) for the prevention of detriment; or

- (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 47.

45. Where so required by the engineer Network Rail must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis.

46.—(1) Before the commencement of the initial construction of any part of the specified work and again following practical completion of the specified work Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and Network Rail, of a survey (including a dip-survey to measure the depth of the waterway and a survey to measure the headroom of the existing road bridge over the waterway) (“the survey”) of so much of the waterway and of any land and works of Network Rail in existence at the date of the coming into force of this Order which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice (except in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of Network Rail which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and Network Rail at no cost to the Trust.

47.—(1) Network Rail must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed and must not be withheld in respect of a design which accords with the design drawings, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

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and such protective works must be constructed by Network Rail or by the Trust at Network Rail's request with all reasonable dispatch and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer's reasonable satisfaction.

48. Without affecting its obligations under the provisions of this Part of this Schedule Network Rail must consult, collaborate with and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

- (a) the design and appearance of any specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified work,

and must have regard to such views as may be expressed by the Trust, to the extent that these accord with the design drawings and the requirements of the local planning authority, in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽¹⁾ and to the interest of the Trust in preserving and enhancing the environment of its waterways.

49. Network Rail must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

50. Network Rail must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

51.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 47(3) and paragraph 48;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterway, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the waterway which will reduce the dimensions of the waterway or prevent the passage of any vessel which is at the date of this Order able to navigate along the waterway.

(3) Following the completion of the construction of the specified works Network Rail must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

52. Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

53.—(1) Network Rail on being given reasonable notice must—

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- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Trust on being given reasonable notice must—
- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse the Trust's reasonable costs in relation to the supply of such information.

54. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

55. Network Rail must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under paragraph 47(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

56.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works carried out by Network Rail, Network Rail (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment.

(2) Network Rail is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of Network Rail or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work;

and subject to sub-paragraph (4) Network Rail must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

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(3) The fact that any act or thing may have been done by the Trust on behalf of Network Rail or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(4) The Trust must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of Network Rail.

57. Any difference arising between Network Rail and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).